

Andrew M. Hutchison (SBN 289315)
 COZEN O'CONNOR
 101 Montgomery Street, Suite 1400
 San Francisco, CA 94104
 Tel.: (415) 593-9625
 Fax: (415) 692-3514
 Email: ahutchison@cozen.com

Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

JERRY GARRETT, an individual, as
 Special Administrator for the ESTATE
 OF FRANK GARRETT, JR.,

Plaintiff,

v.

ITM TWENTYFIRST, LLC; JOHN
 DOES 1-5; and ABC CORPORATIONS
 1-5.

Defendants.

Case No.

COMPLAINT FOR:

RECOVERY OF INSURANCE
 PROCEEDS DUE TO LACK OF
 INSURABLE INTEREST

DEMAND FOR JURY TRIAL

COMPLAINT

Jerry Garrett, as the Special Administrator for the Estate of Frank Garrett, Jr. (the "Estate"), by and through his undersigned counsel, hereby files and submits this Complaint against Defendants, ITM TwentyFirst, LLC ("ITM"), John Does 1-5, and ABC Corporations 1-5 (collectively, "Defendants"), and in support thereof, alleges and says:

PARTIES

1. Jerry Garrett, a resident and citizen of California, brings this action on behalf of the Estate of his father, Frank Garrett, Jr.

2. Frank Garrett was at all times relevant to this Complaint a citizen and resident of California. Frank Garrett died a citizen and resident of Menlo Park, San

1 Mateo County, California, and thus the Estate is considered a citizen of San Mateo
2 County, California.

3 3. Frank Garrett died testate. His Will names his wife, Jean L.Y. Garrett,
4 as Executrix. Jerry Garrett brings this action at the request of Jean L.Y. Garrett and
5 pursuant to a petition to be filed by Jean L.Y. Garrett in San Mateo County, California,
6 for Jerry Garrett's appointment as Special Administrator.

7 4. ITM is a limited liability company with a single member, Longevity
8 Holdings, Inc. ("Longevity"). Longevity is a corporation organized under Delaware
9 law with its principal place of business in Minnesota. An LLC is deemed a citizen of
10 each state in which its members reside. Therefore, ITM is a citizen of both Delaware
11 and Minnesota.

12 5. If and to the extent that ITM did not act solely on its own behalf to obtain
13 and retain for itself the death benefit proceeds of one or more life insurance policies
14 insuring the life of Frank Garrett, upon information and belief, ITM was retained by
15 investor or investors John Does 1-5 and/or ABC Corps. 1-5 ("Investor Defendants"),
16 to act as the agent of one or more of the Investor Defendants in connection with such
17 policies. The Estate currently lacks information sufficient to form a belief as to the
18 location, organization, residency, or citizenship or any of the Investor Defendants.

19 JURISDICTION AND VENUE

20 6. This Court has subject-matter jurisdiction under 28 U.S.C. § 1332
21 because there is complete diversity of citizenship between the Estate, a citizen of
22 California, and ITM, a citizen of Minnesota and Delaware, and because the amount
23 in controversy exceeds \$75,000 exclusive of interest and costs.

24 7. This Court possesses personal jurisdiction with respect to ITM in this
25 action because, among other things, ITM had extensive contact with the forum that
26 relates to the core subject-matter of this action, including action within the forum to
27 monitor, service, maintain, and collect or assist in collecting on one or more life
28

1 insurance policies that insured the life of a California resident (the now deceased
2 Frank Garrett).

3 8. For example, upon information and belief, while Frank Garrett was
4 living, ITM maintained regular contact with him and his family in California to
5 monitor his health. This was done by way of routine phone calls and mail.

6 9. Further, upon information and belief, while Frank Garrett was living,
7 ITM obtained a HIPAA release from him in California and used that release to contact
8 his medical providers in California and to obtain his medical records from those
9 California providers. The purpose of collecting such records was so that ITM could
10 conduct a life expectancy analysis on Frank Garrett, a California resident, to predict
11 when he would die and when they could expect to collect money from his death.

12 10. After Frank Garrett passed away, ITM communicated with his family
13 seeking their assistance in obtaining a copy of his death certificate from Santa Clara
14 County, California. ITM or their agent(s) then requested and received Mr. Garrett's
15 death certificate from officials in Santa Clara County, California.

16 11. Upon information and belief, ITM thereafter used that California death
17 certificate to collect the death benefit proceeds from the policies on the life of Frank
18 Garrett, a resident of California. Upon information and belief, ITM also carried on
19 extensive business in the forum with respect to other insureds.

20 12. Upon information and belief, one or more of the Investor Defendants
21 was/were the owner and/or ultimate beneficiary of one or both of the life insurance
22 policies insuring the life of Frank Garrett. Upon information and belief, the Investor
23 Defendant(s) is/are the owner(s) and/or ultimate beneficiary/ies of other life insurance
24 policies insuring the lives of residents of California. Upon information and belief,
25 working through servicers, including ITM, the Investor Defendant(s) direct(s) ITM as
26 agent to (a) regularly and systematically contact Californians to monitor their health;
27 (b) obtain HIPAA releases from Californians and use those releases to obtain their
28 medical records from providers throughout the state; and (c) regularly obtain death

1 certificates from counties throughout the state and uses those death certificates to
2 make or assist in making claims for the death benefits of life insurance policies on the
3 lives of Californians.

4 13. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)
5 because a substantial part of the events giving rise to Plaintiff's claims occurred within
6 the Northern District of California. In addition to the allegations above, this cause of
7 action arose within the forum and relates to life insurance policies that insured the life
8 of Frank Garrett, who was at all relevant times a resident of San Mateo or Santa Clara
9 Counties, California, both of which are within this judicial district. Moreover, the
10 Estate is located in and is a citizen of the district in which this forum is situated.
11 Relevant witnesses and sources of information and documents relating to the
12 application for the policies and their issuance are believed to be located within this
13 forum. Additionally, upon information and belief, witnesses, documents and sources
14 of information relating to ITM's efforts, acting on its own behalf or as the agent of
15 one or more of the Investor Defendants, to obtain and use the California death
16 certificate for Frank Garrett are believed to be located within this forum.

17 **FACTS COMMON TO ALL CLAIMS**

18 14. This action concerns two life insurance policies issued on the life of
19 Frank Garrett (collectively, the "Policies").

20 15. The first policy was issued by PHL Variable Insurance Company
21 ("PHL") on February 7, 2006 (the "Delaware Policy"). The Delaware Policy was
22 issued to the Frank Garrett, Jr. 2006 Insurance Trust (the "Delaware Trust"), a
23 Delaware statutory trust.

24 16. The second policy was issued by Massachusetts Mutual Life Insurance
25 Company ("Mass Mutual") on February 14, 2006 (the "South Dakota Policy"). The
26 South Dakota Policy was issued to the Frank Garrett Jr. 2006 Irrevocable Trust (the
27 "South Dakota Trust"), a South Dakota statutory trust.

The Delaware Policy

17. The Delaware Policy is controlled by and subject to Delaware law, including because, upon information and belief, the policy was applied for, issued, and delivered in Delaware to a Delaware statutory trust in Delaware, and thus was a Delaware trust owned policy as defined in Delaware’s insurable interest statute, 18 *Del. C. § 2704*.

18. As stated by the Supreme Court of Delaware, it is well recognized that, “[s]ince the initial creation of life insurance during the sixteenth century, speculators have sought to use insurance to wager on the lives of strangers.” *PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Trust*, 28 A.3d 1059, 1069 (Del. 2011) (“*Price Dawe*”). Insurance policies which are procured as a wager on the life of the person insured not only violate Delaware public policy and its constitutional prohibition on wagering, but they also violate the state’s insurable interest requirement, which precludes investors from manufacturing life insurance policies for the purpose of resale. *Id.*

19. Although human life speculators have been a problem for hundreds of years, never has this problem been more wide-spread or involved such vast amounts of money than in recent years. In the early 2000s, institutional investors began pooling large blocks of high-value life insurance policies into special purpose vehicles, such as tax-exempt entities or trusts, the interests of which were effectively securitized and sold to other investors.

20. It is well established, however, that in the early 2000s, there was not a sufficient supply of existing life insurance policies to satisfy investor demand. In particular, investors were interested in high face amount policies insuring the lives of senior citizens, but there were only “a limited number of seniors who had unwanted policies of sufficiently high value.” *Price Dawe*, 28 A.3d at 1070. “As a result, STOLI promoters sought to solve the supply side shortage by generating new, high value policies.” *Id.* These policies are often referred to as STOLI—meaning stranger originated life insurance. *Id.*

1 21. One such STOLI promoter was family of interrelated Delaware entities
2 known generally as Coventry, which operated an extremely large Delaware-centered
3 STOLI program that generated thousands of STOLI policies on the lives of senior
4 citizens from all over the United States.

5 22. Entities such as Coventry—known in the STOLI industry as “funders”—
6 worked with a nationwide network of insurance producers, who, acting as the funders’
7 agents, assisted the funders by, among other things, identifying senior citizens
8 meeting the funders’ investment criteria and influencing those seniors to become
9 involved in the STOLI transactions the funders were orchestrating.

10 23. The STOLI transactions orchestrated by funders like Coventry and its
11 agents were presented to hand-selected senior citizens in rosy terms that camouflaged
12 the transactions’ impropriety as being a “risk-free” opportunity, “just a good deal,” or
13 as being similar to “hitting the lottery” or acquiring a winning “bingo” card.

14 24. The specific mechanisms by which each funder’s STOLI program
15 operated could and often did vary in one respect or another. But each shared basic
16 similarities including that the policies at issue were procured by third parties that
17 lacked an insurable interest in the insureds and that sought to wager on the life of the
18 insureds.

19 25. It is widely recognized that one of the most common STOLI schemes
20 involved the use of two-year, non-recourse premium financing. Under this type of
21 STOLI scheme, a trust is typically created in the insured’s name to serve as the
22 nominal owner of the policy and to enter into a two-year loan where the only collateral
23 is the policy itself, which is assigned as such to the STOLI lender. The loan is
24 designed to coincide with the policy’s two-year contestable period, and the policy is
25 sold to an investor after that period has expired.

26 26. The Delaware Supreme Court in *Price Dawe* recognized that policies
27 created using this same type of two-year non-recourse premium finance scheme—
28 which is what Coventry orchestrated here with regard to the Delaware Policy—are

1 STOLI and thus void *ab initio*. See *Price Dawe*, 28 A.3d at 1070-71, n.27 (citing
 2 Martin, *Betting on the Lives of Strangers*, 134 U. Pa. J. Bus. L. at 175 (STOLI exists
 3 where a trust is used to own the policy and the interests in the trust are transferred to
 4 an investor at the end of a two-year loan)); *id.* at n.32 (citing *Spin-Life Insurance*
 5 *Policies: A Dizzying Effect on Human Dignity and the Death of Life Insurance*, 7 Ave
 6 Maria L. Rev. 605, 606, 622-24 (2009) (STOLI includes two-year loans where “the
 7 loan amount, interest, and fees imposed by the investors are high enough that the
 8 applicant is forced to accept the offers made by the investors and transfer ownership
 9 of the policy”)).

10 27. Since at least 1914, Delaware law has followed the United States
 11 Supreme Court’s decision in *Warnock v. Davis*, 104 U.S. 775 (1881). See *Balt. Life*
 12 *Ins. Co. v. Floyd*, 28 Del. 201, 207, 91 A. 653, 656 (Del. 1914) (“Where a third party,
 13 without any insurable interest in the life of another, procures a policy of insurance on
 14 the life of such person, either by having a policy issued directly to himself, or by
 15 having the person whose life is insured take out a policy to himself, and then assign
 16 it, these facts, as is held in *Warnock v. Davis* [104 U.S. 775, 26 L. Ed. 924],
 17 conclusively show that the transaction is a mere speculation on the life of another, and
 18 as such is contrary to public policy, and therefore void.”).

19 28. Although dating back to 1881, *Warnock* involved a stranger-originated,
 20 premium-financed life insurance policy where an insured was induced to apply for a
 21 policy that was paid for by an entity known as the Scioto Trust Association. In
 22 exchange, the trust promised that when the insured died, one tenth of the policy’s
 23 death benefit would be paid to his wife (with the rest going to the trust). After the
 24 insured passed and the insurer paid the policy’s death benefit, the insured’s estate sued
 25 the trust and the Court held that the policy was a mere wager on the life of the insured.
 26 The Court thus awarded the STOLI proceeds to the insured’s estate. 104 U.S. 775.

27 29. Not surprisingly, therefore, every court that has considered Coventry’s
 28 two-year, non-recourse premium finance scheme under Delaware law has held, as a

1 matter of law, that: (i) Coventry operated a STOLI program, and (ii) policies produced
 2 by that program are void *ab initio*. See, e.g., *Sun Life v. U.S. Bank*, No. 14-CIV-
 3 62610, 2016 WL 161598, at *10-13 (S.D. Fla. Jan. 14, 2016) (“*Malkin*”), *aff’d*, 693
 4 F. App’x 838 (11th Cir. June 12, 2017); *U.S. Bank v. Sun Life*, No. 14-4703, 2016
 5 WL 8116141, at *12-14 (E.D.N.Y. Aug. 30, 2016) (“*Van de Wetering*”), *adopted in*
 6 *full*, 2017 WL 347449 (E.D.N.Y. Jan. 24, 2017); *Sun Life v. U.S. Bank*, 369 F. Supp.
 7 3d 601, 609 (D. Del. 2019) (“*Sol*”).

8 30. And where, as here, an insurer pays the proceeds on a contract that lacked
 9 insurable interest, the policy proceeds must be paid over to the insured’s estate under
 10 Delaware’s common law and its insurable interest statute, 18 *Del. C.* § 2704(b). See
 11 *Estate of Malkin v. Wells Fargo Bank, N.A.*, 379 F. Supp. 3d 1263, 1284 (S.D. Fla.
 12 2019) (“*Malkin II*”); *Lavastone Capital LLC v. Estate of Berland*, —A.3d—, No. 75-
 13 2021, 2021 WL 5316071, at *5-8 (Del. Nov. 16, 2021) (“*Berland*”).

14 31. The New Jersey Supreme Court also recently followed Delaware’s lead,
 15 explaining that STOLI policies violate insurable interest laws, and specifically
 16 explaining that two-year, non-recourse STOLI schemes are a common way in which
 17 STOLI policies were created. See *Sun Life Assur. Co. of Canada v. Wells Fargo Bank,*
 18 *N.A.*, 238 N.J. 157, 171-72 (N.J. Sup. Ct. 2019) (“*Bergman*”) (“Generally, an investor
 19 funds a STOLI policy from the outset, which makes it possible to obtain a policy with
 20 a high face value. The investor may lend the insured ‘the money to pay the premiums
 21 for’ the period of incontestability, typically two years. It is also common for an
 22 insured to buy the policy in the name of a trust and name a ‘spouse or other loved one
 23 as the trust beneficiary.’ In such arrangements, [i]f the insured dies within [the
 24 contestability] period, his spouse, as beneficiary of the insurance trust, will get the
 25 death benefit (the free insurance), pay back the loan plus interest from the proceeds,
 26 and often pay the broker up to fifty percent of the benefit received. If the insured lives
 27 beyond two years or the contestability period, then the life settlement company buys
 28 the beneficial interest in the insurance trust, paying the insured a lump sum percent of

1 the face value of the policy The life settlement company or its investors will
2 continue to pay the premiums on the policy, and when the insured dies, they will get
3 the death benefit. Clearly, the sooner the insured dies, the greater the company's
4 profit. STOLI arrangements thus present a significant legal problem: the investors
5 have 'no insurable interest in the life of the insured.' As a result, the transactions pose
6 questions in light of New Jersey's policy against wagering.") (citing Martin, *Betting*
7 *on the Lives of Strangers*, 13 U. Pa. J. Bus. L. at 188).

8 32. Likewise, state insurance departments have long recognized that such
9 two-year, non-recourse loan schemes are STOLI. *See, e.g.*, Fla. Office of Ins. Reg.,
10 *Secondary Life Ins. Market Report to the Fla. Legis.*, at 11-12 (Dec. 2013), *available*
11 *at* <https://www.floir.com/siteDocuments/SecondaryLifeInsMarketReport2013.pdf>
12 ("In a typical STOLI transaction, the promoters and investors may establish an
13 irrevocable trust, obtain an insurance policy on a senior, obtain a premium-finance
14 loan, and pay the life insurance policy premiums for two years (*i.e.*, the contestable
15 period). The money needed to pay these premiums, which can be substantial, is
16 financed through premium-finance lenders. Typically, these premium-finance loans
17 are non-recourse loans, meaning that the life insurance policy is the only collateral for
18 the loan and the premium-finance lender can pursue only the collection of the
19 collateral if there is a default.").

20 33. And as to Coventry specifically, it has been determined that Coventry
21 did not act in "good faith" when it procured policies using its two-year, non-recourse
22 premium finance program. *See Sol*, 369 F. Supp. 3d at 614 ("On the record before
23 the Court, taking the evidence in the light most favorable to Defendant, a reasonable
24 factfinder could only find that the third parties – Coventry, LaSalle, and/or SFG – did
25 not act in good faith;" explaining "[t]his conclusion is based on at least the following,
26 none of which (on the record before the Court) is in genuine dispute: (1) Sol's
27 application contained material misrepresentations as to her finances and who would
28 be paying the premiums; (2) all of the third parties failed to perform adequate due

1 diligence of (and may have willfully ignored) Sol's finances; (3) Coventry sought its
2 own pre-application independent life-expectancy report of Sol; (4) the premium
3 finance loan was non-recourse; (5) Sol and the Trusts lacked the practical ability to
4 pay the premiums or repay the loan using anything but the proceeds from the Policy;
5 (6) Coventry secured an irrevocable appointment of power of attorney over any life
6 insurance policy owned by the Trusts, and to originate other policies in Sol's name;
7 and (7) the entire arrangement presented a win-win situation for Coventry and its
8 lending associates, as discussed in further detail below.”).

9 34. Moreover, Coventry has been investigated by state insurance
10 commissioners, which have made findings in connection with Coventry's alleged
11 fraudulent activities in the business of life insurance. *See* Testimony of Mary Beth
12 Senkewicz, Deputy Insurance Commissioner, Fla. Office of Ins. Regulation, at 9-11
13 (Apr. 29, 2009), available at <https://tinyurl.com/3eya5fxp> (summarizing
14 investigations by the insurance departments of New York and Florida into fraudulent
15 activities by Coventry, noting that Coventry agreed to pay a \$1.5 million fine in
16 connection with Florida's investigation).

17 35. After analyzing the Coventry Program, the Delaware Supreme Court
18 recently reaffirmed an estate's right to recover death benefit proceeds where the
19 policy was used as a mere cover for a wager. *See Berland*, 2021 WL 5316071, at *5-
20 8 (holding that a policy procured through premium financing is void where “a third
21 party, and not the insured, bears the entire financial liability for obtaining the policy”
22 or where a “the trust [which owned the policy] is created through nominal funding as
23 a mere formality,” and that a policy is only valid if “the insured or his or her trust
24 procured or effected the policy in good faith, for a lawful insurance purpose, and not
25 as a cover for wagering contract,” otherwise an estate may recover the death benefit
26 proceeds because “the General Assembly has prescribed that the estate should receive
27 the proceeds of [a STOLI] policy as a matter of public policy” and “equitable
28 principles do not apply” such claims).

1 36. The Delaware Policy was procured through the Coventry Program.

2 37. In 2006, Coventry procured the Delaware Policy insuring the life of
3 Frank Garrett, not for the benefit of him or his family but rather for itself and/or other
4 stranger investors.

5 38. This was done using Coventry's two-year, non-recourse premium
6 finance STOLI scheme, and the transaction at issue here is a mirror image of the
7 unlawful STOLI transactions created and consummated by Coventry in *Berland*,
8 *Malkin*, *Malkin II*, *Van de Wetering*, and *Sol*.

9 39. To induce Frank Garrett to allow the Policy to be procured on his life,
10 Coventry and those acting on its behalf may have represented that the Policy was
11 being procured through a legitimate and legal transaction, or further induced Frank
12 Garrett with the promise of financial compensation if he permitted the Policy to be
13 procured.

14 40. In reality, however, Coventry procured the Policy through an illegal
15 STOLI scheme and Coventry lacked a valid insurable interest in the life of Frank
16 Garrett.

17 41. Coventry accomplished this by causing an application (the "Delaware
18 Application") for the Policy submitted to PHL, which ultimately issued the Policy as
19 a Delaware life insurance policy.

20 42. Before causing the Delaware Application to be submitted to PHL,
21 however, Coventry: (i) obtained a HIPAA release from Frank Garrett and used that
22 release to collect his medical records and to prepare a life expectancy report to predict
23 how long he might live, and thus how valuable the Policy might be for Coventry; and
24 (ii) obtained a broad irrevocable power of attorney over Frank Garrett and any policy
25 on his life, which permitted Coventry to originate policies on him.

26 43. Coventry then caused the creation of two Delaware statutory trusts in
27 Frank Garrett's name, using Coventry's boilerplate, non-negotiable trust documents
28 which were identical in all material respects to the Coventry trust documents used in

1 *Berland, Malkin, Malkin II, Van de Wetering, and Sol*—and in countless other STOLI
2 transactions orchestrated by Coventry in and under Delaware law.

3 44. Those trust documents formed the Delaware Trust, whose purpose was
4 to serve as the owner and beneficiary of the Policy.

5 45. Coventry also created a sub-trust to the Delaware Trust (the “Sub-
6 Trust”), whose purpose was to serve Coventry and to become the named borrower
7 under Coventry’s non-recourse premium finance program.

8 46. Coventry installed its go-to trustee, Wilmington Trust Company
9 (“Wilmington Trust”), as the trustee of the Delaware Trust and the Sub-Trust, and
10 used both trusts as covers to procure the Policy without a valid insurable interest.

11 47. Upon information and belief, however, Wilmington Trust never met or
12 spoke with Frank Garrett, was not paid by him, and was acting solely at the direction
13 of and for the benefit of Coventry.

14 48. At Coventry’s direction, the Sub-Trust, acting through Wilmington
15 Trust, entered into an approximately 26-month non-recourse “loan” administered by
16 Coventry, with the Policy serving as the sole collateral for the purported “loan.”

17 49. As a result of this purported “loan,” neither Frank Garrett nor anyone
18 with an insurable interest in his life ever paid any premiums on the Policy. Rather,
19 the “loan” was used to conceal the fact that such premiums were paid by Coventry for
20 the purpose of creating a wager on Frank Garrett’s life.

21 50. Coventry controlled and directed the entire transaction—which followed
22 Coventry’s standard STOLI scheme—and Coventry and its cohorts used Frank
23 Garrett as an instrumentality to procure the Policy so that strangers with no insurable
24 interest could wager on his early demise.

25 51. Upon information and belief, once the purported “loan” became due,
26 stranger investors unrelated to Frank Garrett took formal control of the Policy.

27
28

The South Dakota Policy

52. South Dakota, like Delaware, has long forbid STOLI policies.

53. Section 58-10-5 of South Dakota's Codified Laws was enacted in 1991, and entitles an insured's estate to recover policy proceeds on any policy where an insurer pays the proceeds on a contract that lacked insurable interest under South Dakota's insurable interest statute. S.D.C.L. § 58-10-5.

54. Upon information and belief, an entity known as United National Funding, LLC ("United") ran a two-year, non-recourse premium financing STOLI scheme (the "United Program") similar to the Coventry Program.

55. In 2006, United procured the South Dakota Policy insuring the life of Frank Garrett—not for the benefit of him or his family—but rather for itself and/or other stranger investors.

56. This was done using United's two-year, non-recourse premium finance STOLI scheme.

57. Upon information and belief, to induce Frank Garrett to allow the Policy to be procured on his life, United and those acting on its behalf represented that the Policy was being procured through a legitimate and legal transaction, or further induced Frank Garrett with the promise of financial compensation if he permitted the Policy to be procured.

58. In reality, however, United procured the Policy through an illegal STOLI scheme and United lacked a valid insurable interest in the life of Frank Garrett.

59. United accomplished this by causing an application (the "South Dakota Application") for the Policy submitted to Mass Mutual, which ultimately issued the Policy as a South Dakota life insurance policy.

60. Before causing the South Dakota Application to be submitted to Mass Mutual, however, United obtained a HIPAA release from Frank Garrett and used that release to collect his medical records and to prepare a life expectancy report to predict how long he might live, and thus how valuable the Policy might be for United.

1 61. United then caused the creation of the South Dakota Trust for the purpose
2 of serving as the owner and beneficiary of the Policy.

3 62. Upon information and belief, United installed its trustee, Bank of Sioux
4 Falls (“First National”), as the trustee of the South Dakota Trust, and used the South
5 Dakota Trust as a cover to procure the Policy without a valid insurable interest.

6 63. Upon information and belief, however, First National never met or spoke
7 with Frank Garrett, was not paid by him, and was acting solely at the direction of and
8 for the benefit of United.

9 64. Upon information and belief, at United’s direction, the South Dakota
10 Trust, acting through First National, entered into an approximately two year non-
11 recourse “loan” administered by United, with the Policy serving as the sole collateral
12 for the purported “loan.”

13 65. Upon information and belief, as a result of this purported “loan,” neither
14 Frank Garrett nor anyone with an insurable interest in his life ever paid any premiums
15 on the Policy. Rather, the “loan” was used to conceal the fact that such premiums
16 were paid by United for the purpose of creating a wager on Frank Garrett’s life.

17 66. Upon information and belief, United controlled and directed the entire
18 transaction and, together with its cohorts, used Frank Garrett as an instrumentality to
19 procure the Policy so that strangers with no insurable interest could wager on his early
20 demise.

21 67. Once the purported “loan” became due, a little more than two years after
22 the South Dakota Policy was in force, United’s successor-in-interest, New Stream
23 Insurance, LLC (“New Stream”), took formal control of the South Dakota Policy.

24 **Frank Garrett’s Death and the Death Benefits**

25 68. On January 18, 2019, Frank Garrett died.

26 69. Upon learning of Frank Garrett’s death, ITM and one or more of the
27 Investor Defendants reached into this forum to obtain a copy of Frank Garrett’s Santa
28

1 Clara County death certificate so that it could be submitted to claim the Policies' death
2 benefit proceeds.

3 70. Upon information and belief, without notifying the Estate or the family
4 of Frank Garrett, a claim for the Policies' death benefits were made by Defendants,
5 and the death benefits were then paid by the insurance carriers to Defendants, their
6 agent(s), their principal(s), or those working in concert with them.

7 71. Upon information and belief, Defendants were aware—or willfully
8 ignorant of the fact—that the Policies' were procured or caused to be procured
9 through a STOLI scheme, that they were illegal human-life wagers, and that they
10 lacked insurable interest at inception.

11 72. The Policies' death benefit proceeds are believed to exceed \$20 million.

12 **FIRST CAUSE OF ACTION: RECOVERY OF INSURANCE PROCEEDS**
13 **DUE TO LACK OF INSURABLE INTEREST (DELAWARE POLICY)**

14 73. The Estate hereby incorporates by reference each and every allegation
15 contained in the preceding paragraphs as if set forth herein at length.

16 74. The Delaware Policy is controlled by and subject to Delaware law,
17 including because the Delaware Policy was applied for and delivered to the trustee of
18 the Delaware Trust in Delaware, and is thus a Delaware trust owned policy as defined
19 in Delaware's insurable interest statute, 18 *Del. C.* § 2704.

20 75. The Delaware insurable interest statute provides, among other things,
21 that “no person shall procure or cause to be procured any insurance contract upon the
22 life or body of another individual unless the benefits under such contract are payable
23 to the individual insured or his or her personal representatives or to a person having,
24 at the time when such contract was made, an insurable interest in the individual
25 insured.” 18 *Del. C.* § 2704.

26 76. The Delaware Supreme Court has clarified that this insurable interest
27 requirement is not satisfied where a third party without an insurable interest uses an
28

1 insured as an instrumentality to procure a policy for itself as a wager on the insured's
2 life. *Price Dawe*, 28 A.3d 1059.

3 77. Where an insurance company pays the death benefit on a policy lacking
4 insurable interest, the "executor or administrator" of the insured is entitled to recover
5 such benefits from the beneficiary, assignee, or payee that received the benefits as a
6 matter of common law and statute. 18 *Del. C.* § 2704 (b). *See, e.g., Berland*, 2021
7 WL 5316071, at *5-8; *Malkin II*, 379 F. Supp. 3d at 1284.

8 78. The Delaware Policy at issue in this case was procured or caused to be
9 procured without insurable interest as a wager on Frank Garrett's life using
10 Coventry's standard Delaware-centered STOLI scheme.

11 79. Regardless of whether Frank Garrett knew the details of this scheme or
12 his identity was merely used as an instrumentality to procure the Delaware Policy, as
13 set forth above, stranger investors were wagering on the life of Frank Garrett and
14 hoping to trigger a secondary market cash-in on the Delaware Policy's death benefit.

15 80. The Delaware Policy's death benefit was paid, transferred, or otherwise
16 assigned to Defendants, their principals or agents, or others working in concert with
17 them.

18 81. As a consequence, the Estate is entitled to recover the Delaware Policy's
19 death benefit proceeds, which are believed to exceed \$10 million (plus applicable
20 interest, attorneys' fees, and other costs and damages), from or through Defendants.

21 **SECOND CAUSE OF ACTION: RECOVERY OF INSURANCE PROCEEDS**
22 **DUE TO LACK OF INSURABLE INTEREST (SOUTH DAKOTA POLICY)**

23 82. The Estate hereby incorporates by reference each and every allegation
24 contained in the preceding paragraphs as if set forth herein at length.

25 83. The South Dakota Policy is controlled by and subject to South Dakota
26 law, including because the South Dakota Policy was applied for, issued for delivery,
27 and delivered to the trustee of the South Dakota Trust in South Dakota. S.D.C.L. §
28 58-10-5.

1 84. The South Dakota insurable interest statute provides, among other
2 things, that “no person shall procure or cause to be procured any insurance contract
3 upon the life or body of another individual unless the benefits under such contract are
4 payable to the individual insured or his or her personal representatives or to a person
5 having, at the time when such contract was made, an insurable interest in the
6 individual insured.” S.D.C.L. § 58-10-3.

7 85. Where an insurance company pays the death benefit on a policy lacking
8 insurable interest, the “executor or administrator” of the insured is entitled to recover
9 such benefits from the beneficiary, assignee, or payee that received the benefits.
10 S.D.C.L. § 58-10-5.

11 86. The South Dakota Policy at issue in this case was procured or caused to
12 be procured without insurable interest as a wager on Frank Garrett’s life using
13 United’s purported STOLI scheme.

14 87. Regardless of whether Frank Garrett knew the details of this scheme or
15 his identity was merely used as an instrumentality to procure the South Dakota Policy,
16 as set forth above, stranger investors were wagering on the life of Frank Garrett and
17 hoping to trigger a secondary market cash-in on the South Dakota Policy’s death
18 benefit.

19 88. The South Dakota Policy’s death benefit was paid, transferred, or
20 otherwise assigned to Defendants, their principals or agents, or others working in
21 concert with them.

22 89. As a consequence, the Estate is entitled to recover the South Dakota
23 Policy’s death benefit proceeds, which are believed to exceed \$10 million (plus
24 applicable interest, attorneys’ fees, and other costs and damages), from or through
25 Defendants.

THIRD CAUSE OF ACTION: VICARIOUS LIABILITY

90. The Estate hereby incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth herein at length.

91. ITM was, at all times relevant to this matter, the agent of one or more of the Investor Defendants.

92. The above-described acts of ITM were committed while acting as an actual and/or apparent agent, representative, or contractor of one or more of the Investor Defendants.

93. The above-described acts of ITM were committed within the scope of their actual and/or apparent agency while performing services for and/or furthering the business interests of one or more of the Investor Defendants.

94. Among other things, upon information and belief, ITM, on behalf of and at the direction of one or more of the Investor Defendants, facilitated the submission of the death claim to the insurance carriers and received the Policies' death benefits.

95. As principal(s) for ITM, one or more of the Investor Defendants is/are responsible for all of the acts and/or omissions committed by ITM.

96. As a consequence, the Estate is entitled to recover (a) the South Dakota Policy's death benefit proceeds, which are believed to exceed \$10 million (plus applicable interest, attorneys' fees, and other costs and damages), and (b) the Delaware Policy's death benefit proceeds, which are believed to exceed \$10 million (plus applicable interest, attorneys' fees, and other costs and damages), from or through Defendants.

Dated: January 18, 2022

COZEN O'CONNOR

/s/ Andrew M. Hutchison

Andrew M. Hutchison (SBN 289315)

Gregory J. Star (*pro hac vice forthcoming*)

Charles J. Vinicombe (*pro hac vice forthcoming*)

Michael J. Broadbent (*pro hac vice forthcoming*)

Chase A. Howard (*pro hac vice forthcoming*)

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury on all issues so triable.

Dated: January 18, 2022 COZEN O'CONNOR

/s/ Andrew M. Hutchison

Andrew M. Hutchison (SBN 289315)

Gregory J. Star (*pro hac vice forthcoming*)

Charles J. Vinicombe (*pro hac vice forthcoming*)

Michael J. Broadbent (*pro hac vice forthcoming*)

Chase A. Howard (*pro hac vice forthcoming*)

Attorneys for Plaintiff